Adoption Policy in Great Britain and North America*

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ABSTRACT

This paper has two purposes. First, to explore what existing adoption legislation may indicate about the meaning and function of adoption practices in North America and Great Britain. Second, to consider some possible policy implications revealed by clearer understanding of the social meaning of existing adoption laws. The first part of the paper summarizes briefly the history of legal adoption. The second examines what is explicitly and implicitly revealed by adoption law and policies about the social purposes of adoption and about prevailing social values concerning the family. The third part examines possible avenues of policy change in North America.

HISTORICAL REFERENCE POINTS

Adoption, in some of its forms, is probably as old as the family itself. Among the ancient Greeks and Romans, adoption enabled ancestral worship by a son-priest when no son was born (de Coulanges, 1873). There the practice also served as a means for protecting the family's status and material wealth. In medieval Japan, adoption served the feudal warrior caste in expanding their fiefdoms and in making alliances (Kirk, 1964b, 1971). Given such social purposes, formal adoptions were restricted to males, either as children or as adults. Among the Inuit peoples of North America, adoption has long been practised as a means of mutual aid among isolated bands living in a harsh climate (Boas, 1888). The prevalence of adoption in many preliterate societies has been regarded as basic to the understanding of family structure (Lowie, 1930; Firth, 1936; Weckler, 1953).

Although adoption patterns, in ancient or preliterate societies, typically received traditional sanction, most notably religious, the function of these

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patterns was principally to serve the social, political and economic interests of kin groups, rather than the interests of the adopted. It is in this that there exists a main difference between all previous and modern adoption practices. In addition to social interests, modern adoption is to protect the interests of the children being adopted. Thus the first law not based on Roman precedents, enacted in Massachusetts in 1851, explicitly purported to protect the interest of the adopted child. Similar legislation was first introduced in Canada in New Brunswick in 1873.

The State's increasing involvement in adoption through legislation was undoubtedly not wholly altruistic. The enunciation of the 'best interest of the child' principle served equally the interest of the State. By checking to see that only responsible people were given parental rights through adoption, financial responsibility for the care of dependent children could be most effectively transferred from the public purse to the private. That the State's interest was thus intertwined with concern for the dependent child is shown by the following: to this day the investigations of applicants as fit for adoptive parenthood are typically limited to circumstances in which no existing kinship ties are involved. It is apparently assumed that where kindred are involved the State can more justifiably remove itself from financial responsibility.

Perhaps for a similar mixture of altruistic and financial reasons, adoption laws have increasingly sought to equate the adoptive family with its consanguine counterpart. For instance, the legal regulation of intestate inheritance has in North American jurisdictions almost uniformly separated the adopted from the estates of blood kindred. Simultaneously it has more unequivocally placed the adopted into the circle of the adoptive family. The issuance of amended birth certificates, giving the adoptee an identity with the surname of the adoptive parents, provided a further symbolic separation from the old and linkage to the new kin group. Such legal and policy arrangements have served to institutionalize adoption and thereby to legitimate the adoptive family in the eyes of the public. But to this, largely positive, result of legal adoption 'in the best interests of the child' were added policies and procedures with less beneficial consequences. Since most adoptions in which the State intervened were at first of children born out of wedlock, and since this was in an era of prejudice against illegitimacy, the child's interest was seen to lie in erasing this stigma. Upon adoption the amended birth certificate was to erase the natural parent(s) from the adopted person's vital records. Furthermore, original birth records were typically sealed and available only with a court order. When in many jurisdictions the original parent's name was removed also from the adoption decree, adoption had become

institutionally invisible. If the intent of law and policy was to make it indistinguishable from its consanguine counterpart, the adoptive family had virtually succeeded in its mimicry. That this mimicry was not wholly in the best interest of the adopted child, or indeed in the interest of the society which had sought to so define adoption, will be indicated below.

ADOPTION LAWS AND POLICIES ON TWO SIDES OF THE ATLANTIC

In this section of our paper we must take a closer look at the social values that have been institutionally built into adoptive kinship. We shall try to show that as an artifically contrived family form it is intended both to mimic certain idealized images of the mainstream family and to prop up the idealization. We believe that an inspection of the legalistic creation of adoptive kinship can reveal our collective hopes for the traditional family. At the same time such an inspection should reveal certain drawbacks: when the differences between consanguineal and adoptive kinship are being institutionally extinguished, this tends to obscure the unique characteristics of the adoptive family, both good and less good. Our inspection will follow cross-cultural lines. Such an analysis should reveal issues that often remain hidden when examining a single society.

As is often the case in social history, a sharp change can reveal more about a society's institutions than long periods without change. Such a sharp change occurred in Great Britain in 1975 with the passage into law of an act which permitted adult adoptees access to their original birth certificates (Kirk, 1981). Adoption has only a fifty year legal history in Great Britain, while in North America its history is three times longer. What does the British reform legislation of 1975 reveal about the institution of adoptive kinship, about traditional family values, and about their linkage? More specifically, how do we understand the fact that the reform of adoptive kinship came about in Great Britain so comparatively soon, when in North America with its much longer history of legal adoption, it has not happened?

By way of explanation, Kirk (1981, pp.139–41) suggests that Great Britain has retained a greater sense of its own culture and way of life over time than have Canada or the United States, both of which have experienced more heterogeneity. This has served, to some extent, to insulate Britain against the deteriorating authority of the family, a process already well underway in the nineteenth century on both sides of the Atlantic. In North America, the cultural response to weakening kinship ties and authority, by contrast, has been to hark back to the earlier days of the traditional family. All manner of solutions have been proposed, from increased religious participation to the outlawing of fast

food franchises, in order to stem the erosion of nostalgically-idealized family values. Of these attempts only the artificially contrived, adoptive, family has come to serve as an effective prop, if not a restoration, of traditional family values. This propping up of values that are not as clearly in evidence in the mainstream family does not necessarily stem from the internal dynamics of adoptive family relationships. Instead, it is engendered by the limits which adoption law and policy in North America have placed on the participants.

In North American jurisdictions the doctrine of adoptive kinship as the equivalent of the consanguineal family rests on legal and policy restrictions. Aided by institutionally altered birth certificates and the removal of the original ones from all eyes except those of the registrar of vital statistics, it is not only the birthparents who are, properly enough, denied access to the child they have surrendered for adoption. The adoptee, at whatever age, long after legal maturity is reached, is refused access to original birth records and thus to proper knowledge of his/her roots. All the members, but especially the adoptees, are locked into a model of the family which is more characteristic of the idealized television family, the Waltons, than of any contemporary consanguine family. In this way, the institution of adoptive kinship in North America enshrines an anachronistic image of the family, nostalgically regarded as the core of true and good family organization and relationships. When a member is not free to leave, that member's staying put may be taken as loyalty, but it is at best a case of pseudo-loyalty. The adoptee is not 'free to leave' the confines of the adoptive identity to discover whatever may lie back of it. The North American insistence on the 'equivalence doctrine' tends to imprison the adopted person as *adult* in the same mechanisms which were devised for his or her benefit as *child*. That is one of the ironies of the creative invention of modern adoption as it is almost everywhere maintained in Canadian and American jurisdictions.

In Great Britain, in contrast, adoptive kinship has now been recognized as a unique family form, one which need not prop up nostalgic family values and can be openly acknowledged as different. The opening of original birth records, while this did not take place without debate and discomfort, appears to us then as indicative of a society surer of its past and less in need of idealized culture images and values. In that sense the meanings of 'family', including the meanings attached to adoption, may be closer to the reality of everyday life in Great Britain than on the North American continent. If the equivalence doctrine is to be sustained in law and in policy it means that a cultural hoax is being institutionally enforced. Changes in the pattern of North American adoption, especially

the kind of children available and becoming adopted, have however made this doctrine increasingly irrational and untenable.

The equivalence doctrine of adoptive kinship becomes most clearly visible as a cultural hoax when there are profound discrepances between expected and actual events in the overt aspects of a family's life. When native and other non-white children become 'adoptable' by whites, the families so constituted are clearly 'different', a trend which Hepworth notes is on the increase (1980, pp.164–6). When older children, and even seriously handicapped children, become candidates for the permanency of adoption, the resulting families are likewise visibly 'different'. Such changes have for some years been part of the North American adoption pattern. In such situations, no amount of institutional authority and legitimation, and no amount of genuine love and acceptance by adoptive parents, will make the child indistinguishable from other children born to these parents or to their neighbours. The public awareness of the child's difference will make it virtually impossible to sever all links with the ethnic past, even if, as is sometimes the case, the child is taken to another country. For an older child, with a memory of former homes and relationships, the attempts by parents to erase the past will be experienced as a farce or an insult.

What is especially ironic is that in adoption there resides a remarkably creative potential, both for the substitute family itself, and for the larger numbers of the mainstream family. It is evidently just when differences are being candidly and lovingly acknowledged between adoptive parents and children, that there emerges between them the strongest bonds of solidarity (Kirk, 1964a, pp.82–99; 1981, 39–54). Such a finding heralds a hopeful future for an increasing multiplicity of, and heterogeneity in, family patterns. The adoptive family tends to be voluntaristic, people drawn together out of need rather than by a predetermined biological division of labour based on age and sex. In that sense the adoptive family may be regarded less as a marginal than as a prototypical pattern: it may be the harbinger of a more widespread family formation by choice within the mainstream of the society. Recognition of the duality of one's roots — biological and social — may presage the more comfortable acceptance of evolving family forms. In the more ordinary sense it implies the legitimation of the rising tide of step-family life, preferably without the all too frequent recourse to legal adoption. In the more futuristic realm, the discovery of candidness as a basis for solidarity in adoptive kinship, may possibly pave the way for honesty in lieu of the subterfuge of secrecy currently in vogue among professionals practising artificial insemination with donor sperm, and so-called surrogate motherhood.

There is yet another irony in the archaic restrictions of North American adoptions laws and policies. If they are meant to remind people of the traditional virtues of familism they are especially miscast, for a new wave of familial values appears to be forming everywhere. Thus the growing tendency for single mothers, both never married and divorced, to keep their babies (Hepworth, 1980, p.178), which accounts in part for the dearth of healthy white infants available for adoption, may represent a reassertion of the primacy of familial ties in a troubled and uncertain world. Those nostalgic for the traditional family might not recognize the old drives in the newer tendencies. In other ways, as well, the mainstream family may be in the process of reasserting needs and values which had not been given recognition by the Walton-like cultural ideal. Among these values being rediscovered are the desire for true human sharing, and not being stifled by a traditional division of labour, along lines of gender or age. These values have more naturally been sought in adoptive kinship, out of the dire necessity for sharing, since it has had to manage without biological division of labour.

SOME POLICY IMPLICATIONS

A basic issue in need of consideration in the future is the internally contradictory nature of adoption law and policy in North America. On the one hand it seeks to promote familial values, but it does so by inhibiting the voluntary character of these values when applied to the adoptive family. New laws and policies would recognize the complexities of adoptive kinship and the need for special attention to the life histories of adoptees. This would require not only greater flexibility than is allowed under existing adoption law but an overt recognition of the social purposes and functions being served by the institutionalized adoptive kinship system that has been constructed.

At the centre of our policy critique is the equivalence doctrine. It is the cause of much that makes for problems in adoption. This is most poignantly demonstrated in the adoptive parent-child relationship itself. Policies on adoption have encouraged adoptive parents to tell their adopted child at an early age that he/she is adopted. This process, no matter how lovingly undertaken, is bound to be filled with hurt and self-doubt for both parent and child (Kirk, 1964a, pp.36–49). As noted above, the adoptive parents' acknowledgement of difference of their own situation enlarges their capacity for empathy with the child's situation, and so facilitates open communication on these issues between child and parent. When adopters reject their own difference as parents while they

try to tell the child about his/her difference through adoption it adds to the child's confusion and self-doubt. But that is precisely what the contradictory nature of adoption currently encourages. On the one hand the policy urges that the child be told of adoption, while on the other hand it encourages the adopters to lean on the equivalence doctrine, which implies that there is no difference.

Further to the equivalence doctrine: what family type is taken as the model for adoptive kinship to simulate? Our inspection of the restrictions inherent in current North American adoption policies has suggested an answer. These restrictions point to a cultural ideal of the family that is both archaic and improbable. Except for laws that specify an adult's duty to support aged and indigent parents, the sons and daughters in mainstream families are not coerced into loyalty to parents or other kindred. That is, however, what the adoption laws and policies of most North American jurisdictions now seek to enforce. The adoptee remains a dependant for life, institutionally tied down. But this coercion is effected not by the mores of powerful extended kin groups, as it is in traditional societies, but by the State power as the surrogate of a *Grossfamilie* that no longer wields any real power. The model which underlies the equivalence doctrine refers therefore to a family that is archaic and improbable; it does not correspond to family forms or behaviour requirements that make sense in our time and place.

The realities of family and kinship are quite different from the television image projected by the Waltons. That false front does not hide the pervading instability of marriage, consequent custody and child support disputes, and such indigenous 'solutions' as child kidnapping by estranged parents. If 'the Waltons' model of the family is to be rejected for adoptive kinship, what is to take its place? Our answer is best given by setting the issue on its head. Instead of an archaic image serving as model for the adoptive family, we shall propose that certain intrinsic characteristics of adoptive kinship serve as the model for the mainstream family. Following Kirk (1981) we shall refer to this model as the 'shared fate' model. In the context of adoptive parent-child relations the concept of 'shared fate' implies that the adopters make themselves available to the child in his/her painful search for an understanding of having been given up. In a larger context 'shared fate' denotes mutual aid for mutual needs. It is a term that suggests creative attempts at brave human coping with the many uncertainties and dilemmas that typically result from drastic social change (Kirk, 1964c, pp.258–9). Once that model takes the place of the Waltons model, not only for adoption but for a wider variety

of childrearing and child care patterns, it becomes possible to formulate corollary policies. We shall formulate three such corollary policies here; there may of course be others.

Corollary 1: Once there is an alternative cultural model of the 'shared fate' type, it becomes easier to make the adoptive family a discrete and unique, rather than a catch-all, category of kinship. Thus, a 'shared fate' family model makes it possible to remove the label of 'illegitimacy' from the single family household with an unmarried parent and her or his child. It will no longer be necessary to resort to the legal subterfuge of legitimating the child through adoption. Similarly, it should be quite unnecessary for a step-parent to resort to legal adoption as a device of affirming his or her position *in loco parentis*. Instead, as in British practice, the step-parent can be directed to an alternative device, namely that of guardianship.

Corollary 2: Once the 'shared fate' model has replaced that of the Waltons, it should no longer be necessary for the State authorities to look to adoption as a magic formula for solving all residual child care issues. They will no longer be so ready to regard adoptive placements as the least harmful solution for the child and the least expensive for the State. When thinking about the needs of older children, of handicapped, or of ethnically disadvantaged ones, and about the costs involved, the 'shared fate' model will now open new vistas. It will then be easier to be innovative, at least to the extent of developing more appropriate child care arrangements out of older, long-discarded forms. Take for instance the orphanage: like the earlier almshouse, it served as a device for removing unwanted children from the public scene. Orphanages — yes, they *were* frequently more damaging than helpful to the children. Nevertheless, it may be worth our while to reconsider a total condemnation. Could some part be salvaged? Let us put to use the 'shared fate' model in trying to answer. Group homes have for some years been used where foster homes or adoptive families could not be found or seemed unsuitable. After World War II several countries in Europe experimented with children's villages to take care of the large numbers of homeless youngsters without family supports. At a time in our history when large numbers of older but still active people are made useless by retirement, and when unemployment has disconnected large numbers of younger adults from productive endeavours, why is this reservoir of human beings not creatively combed and partially redirected into the care of children? It is our view that by re-defining the model of the family in 'shared fate' terms we may discover avenues to family renewal that will not require the slavish adherence to the nuclear family model, a model which can, under the best of circumstances, only serve a limited number of children.

Corollary 3: The socio-linguistics of adoption draw attention to the easy and frequent exchange of the terms 'fostering' and 'adopting'. For some time the child welfare professionals made a case for distinguishing between these two forms of 'substitute' parenting. But long-term foster care, and the more recent practice of subsidizing adoptions have served to undermine the distinction. Be re-defining the adoptive family as 'different', the less readily valued foster family can gain in respect and dignity.

As policies concerned with adoption are re-examined, the relationship between foster care and adoption must receive closer attention. In the case of foster care, the principle of the best interests of the child often takes a secondary role to saving increasingly scarce child welfare resources. Except in the relatively unusual conditions of State subsidies for adoption, current interpretation of adoption laws makes the adopted child the sole responsibility of the adoptive parents. This freeing of the State from any further financial liability may become a ready incentive to encourage adoption. This, however, may not be in the best interests of any of the parties involved, particularly if the child is older and has strong attachments to natural parents or to foster parents with whom long years of childhood may have been lived.

SUMMARY AND CONCLUSION

In the light of the foregoing, we believe that the best interests of children, of parents, and of the community will be promoted by a re-definition of adoptive kinship and the reconstruction of the laws and policies regulating adoption. Instead of being seen as the equivalent of an archaic ideal, adoptive kinship can be seen as a unique family form. Once no longer expected to serve as a reminder of archaic family forms and virtues, adoptive kinship can be freeing rather than confining. Adult adoptees can be freed from State-imposed fetters, while the State's representatives — legislators, judges and social service personnel — are freed from obligations to sustain myths which contradict everyday experience.

The reform of adoptive kinship is not, however, advanced by certain devices that are currently in vogue in some North American jurisdictions. Voluntary registers, such as those of Ontario, New Brunswick and Manitoba, are not ways of securing the voluntarism and freedom of adults to discover their own biological roots. That is so especially when such registers require the consensus of adoptive parents, at whatever age the adult adoptee may be when undertaking his or her quest.

The 1975 reforms instituted by the Children Act in Britain should be instructive for Canadians and Americans facing the challenge to rethink adoption law, policy and practice. First, this statute calls into question

the equivalence doctrine, raising the possibility of the emergence of a truly innovative and fundamentally different form of family. Second, the British Act recognized the problems inherent in remarriage and step-parenting. In background research to the Act, the damaging possibilities of step-parent adoption, without careful consideration, was recognized. It was suggested that becoming a 'half-parent' might be preferred to a complete legal displacement of the natural parent, an action which could be ultimately harmful to both the parent involved and to the child.

Much remains to be done on this side of the Atlantic. Our task is not made easier by insufficient and unreliable statistical information on the numbers and kinds of adoptions arranged in the different jurisdictions (Hemphill, McDaniel & Kirk, 1981). Also, we have to consider five dozen provincial and State legislatures, each of which makes its own laws and shapes its own policies with respect to adoption. Perhaps we in Canada, being between the United States and Great Britain in our history and our outlook, can more readily invoke the British precedent toward the reform of adoption law and policy.

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